

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Friday, November 15, 2013
	)	
Defendants.	)	(9:32 a.m. to 10:19 a.m.)

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CIVIL INITIAL CONFERENCE (TELEPHONIC)

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

Court Recorder: Genay Rogan

Clerk: Brandy Cortez

Court Security Officer: Adolph Castillo

Transcriber: Exceptional Reporting Services, Inc.  
P.O. Box 18668  
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1                   **Corpus Christi, Texas; Friday, November 15, 2013; 9:32 a.m.**

2                   **(Call to Order)**

3                   **THE COURT:** Court calls Cause Number C-13-193,  
4                   Veasey, et al versus Perry, et al. Brandy is going to take  
5                   roll to see who is present. I don't think anyone is present in  
6                   the courtroom. Is that right, Brandy?

7                   **THE CLERK:** That's correct, your Honor.

8                   **THE COURT:** Okay, go ahead.

9                   **THE CLERK:** Do I have parties present for the  
10                  individuals and the League of United Latin American Citizens?  
11                  Would you please announce?

12                  **MR. RIOS:** Rolando Rios for the Hispanic County  
13                  Judges and Commissioners.

14                  **THE CLERK:** Okay.

15                  **MR. ESCOBAR:** Manuel Escobar appearing on behalf of  
16                  LULAC.

17                  **THE COURT:** I'm sorry. Who was that?

18                  **MR. ESCOBAR:** Manuel Escobar, E-s-c-o-b-a-r.

19                  **THE CLERK:** Do I have Mr. Dunn present?

20                  **MR. ESCOBAR:** Yes. This is Chad Dunn on behalf of  
21                  Veasey Plaintiff group. With me on the call is Armand Derfner,  
22                  Gerry Hebert, Neil Baron, Scott Brazil and a new lawyer joining  
23                  our team, Emma Simpson.

24                  **THE CLERK:** Thank you.

25                  Do I have Ms. Bell-Platts or Ms. Westfall present for

1 the United States of America?

2 **MS. WESTFALL:** Yes. This is Elizabeth Westfall of  
3 the United States. I'm joined by John Smith, Robert Berman,  
4 Jennifer Maranzano, Bruce Gear and Anna Baldwin.

5 **THE CLERK:** Thank you.

6 Mr. Rios is present for the Texas Association of  
7 Hispanic County Judges?

8 **MR. RIOS:** Yes.

9 **THE CLERK:** Is Mr. Nixon present for True the Vote?

10 **MR. TRAINOR:** This is Trey Trainor and Joe Nixon and  
11 we're present for True the Vote.

12 **THE CLERK:** Thank you.

13 Do I have Ms. Aden or Mr. Haygood present for Texas  
14 League of Young Voters?

15 **MR. HAYGOOD:** Yes, yes, ma'am. This is Ryan Haygood  
16 for the Texas League of Young Voters. I'm joined by Ali  
17 Natasha Korgaonkar and Kelly Dunbar and Hasan Ali.

18 **THE CLERK:** Thank you.

19 Do I have Mr. Rosenberg present for the Mexican  
20 American Legislative?

21 **MR. ROSENBERG:** Yes, I am and with me on the phone  
22 are Mark Posner, Vishal Agraharkar, Victor Good, Nina Perez,  
23 Erandi Zamora, Sonia Gill and Daniel Kobich.

24 **THE CLERK:** Thank you.

25 And for the Defendants, do I have Mr. Scott present?

1                   **MR. SCOTT:** Yes, ma'am.

2                   **THE CLERK:** Thank you, Mr. Scott.

3                   Your Honor, those are the ones present.

4                   **THE COURT:** That's everybody?

5                   All right. Counsel, we are here this morning for  
6 initial pretrial conference on this case and there is a couple  
7 of pending motions that I wanted to address first. The first  
8 one is Docket Entry Number 41. It's the motion for  
9 intervention filed by the Texas Association of Hispanic County  
10 Judges and County Commissioners and Maria Longoria Benevides.  
11 I did see where the United States had filed a response to that  
12 motion to intervene but I didn't see a response from anyone  
13 else. If anyone else filed a response, let me know. If you  
14 don't say anything, I'm going to assume that was just the  
15 United States. Okay.

16                   And I believe the United States -- let's see -- it  
17 opposed the motion just as -- an intervention as a right but  
18 did not oppose the motion to proceed as a permissive  
19 intervention; is that correct, Ms. Westfall?

20                   **MS. WESTFALL:** Yes, this is Ms. Westfall. Anna  
21 Baldwin will be responding to questions concerning this motion,  
22 your Honor.

23                   **THE COURT:** Okay, Ms. Baldwin?

24                   **MS. BALDWIN:** And, your Honor, that's correct. We do  
25 not oppose permissive intervention.

1                   **THE COURT:** Does anyone else wish to be heard on that  
2 motion for intervention?

3                   Okay, no one is saying anything. So Court is then  
4 going to grant the motion -- that motion to intervene by the  
5 Texas Association of Hispanic County Judges and County  
6 Commissions and Maria Longoria Benevides' motion under 20 --  
7 under 24(b)(1) and that was Docket Entry Number 41 that's been  
8 granted then. So if nothing else --

9                   **MR. SPEAKER:** No, your Honor.

10                  **THE COURT:** -- on that issue, we will proceed then to  
11 the motion for intervention of True the Vote which is Docket  
12 Entry Number 38 and the United States had filed an opposition  
13 to that motion to intervene. Is there any other oppositions  
14 that have been filed or that wish to be heard this morning on  
15 that motion?

16                  Okay. Then I'm going to allow -- is it Mr. Nixon?  
17 Are you proceeding or Mr. Trainor on that motion for  
18 intervention?

19                  **MR. TRAINOR:** Your Honor, this is Trey Trainor and  
20 I'll be handling the motion for our side.

21                  **THE COURT:** Okay. You can proceed on your motion.

22                  **MR. TRAINOR:** Very good. Your Honor, we made a  
23 motion to intervene both in the matter of right and as  
24 permissive intervention and as we cited in our brief, the law  
25 with regard to the rule and we cited specifically that as a

1 matter of right, True the Vote should be allowed to intervene  
2 because the intervention is timely, that there's no adequate  
3 representation of the interests of True the Vote in the case.  
4 And we would point out that on this particular point in the  
5 previous litigation surrounding Senate Bill 14 and preclearance  
6 to Senate Bill 14, the Plaintiffs in this case, the United  
7 States, engaged in discovery regarding activities that True the  
8 Vote conducted during the legislative process on the passage of  
9 Senate Bill 14 and in that process came in and looked at  
10 records and other documents that True the Vote had.

11                   And there was nothing done by the Defendants who were  
12 also Plaintiffs in the Section 5 preclearance case to protect  
13 the rights of True the Vote essentially with regard to First  
14 Amendment rights, free association and right decision and so  
15 there was a very intrusive discovery process that was  
16 propounded upon True the Vote.

17                   **THE COURT:** Why couldn't True the Vote protect itself  
18 from that discovery?

19                   **MR. TRAINOR:** Well, we -- obviously we're not a party  
20 to the litigation that went on in the District of Columbia and  
21 obviously the distance there, for one. So as far as the  
22 adequacy of --

23                   **THE COURT:** Right. But I'm just saying True the  
24 Vote, an individual third-party person, can always protect  
25 itself from any discovery propounded to it. Is that --

1                   **MR. TRAINOR:** That's correct, your Honor, but these  
2 discovery processes, especially if they happen in the Section 5  
3 case -- information was turned over by the Plaintiffs in that  
4 case to what True the Vote had conducted without ever  
5 consulting with True the Vote as to whether or not they were  
6 waiving any rights that True the Vote may have had to the  
7 information that had been provided to legislators and others in  
8 that process.

9                   **THE COURT:** Okay. So the State of Texas provided  
10 information that was, I guess, information that belonged to  
11 True the Vote --

12                   **MR. TRAINOR:** Well, it's information that True the  
13 Vote had provided to legislators and the decision not to stay  
14 -- to waive whatever rights they may have had -- our opinion is  
15 that it infringed somewhat on the right of True the Vote to  
16 petition the Government and have that information be protected  
17 in the information that was provided to those legislators.

18                   **THE COURT:** Okay. All right, you can proceed. So  
19 that was one issue as to why no adequate representation,  
20 correct?

21                   **MR. TRAINOR:** That's correct.

22                   **THE COURT:** So anything --

23                   **MR. TRAINOR:** And with regards to the harm here that  
24 would be propounded on True the Vote, the -- an integral  
25 mission of True the Vote as a nonprofit organization is to

1 protect the integrity of the elections in the state of Texas  
2 and they train hundreds of volunteers to go through and look at  
3 those public records all over the state and just put those  
4 records together with various entities, whether it be death  
5 records and election -- voter registration records -- all of  
6 these records, they have volunteers to go through and look at  
7 those and they have supplied both the Plaintiffs and the  
8 Defendants in this case with information concerning the  
9 integrity of the elections in the state of Texas which has had  
10 very little done with that information.

11                   So True the Vote has a database of information where  
12 they had sought to have the Plaintiff in this case come in and  
13 help protect the integrity of the election and nothing has been  
14 done with that information that's been provided to the  
15 Plaintiff and so the interest that True the Vote is trying to  
16 protect here is one of itself as an organization who engages in  
17 the process of addressing election integrity issues and has  
18 been unable to get redress from the Plaintiff in this case to  
19 correct the problems that it has identified with the voter  
20 rolls and, in fact, what we see in this case is just the  
21 opposite where True the Vote is -- thinks that Senate Bill 14  
22 is an integral part of helping to protect the integrity of the  
23 election, the Plaintiffs in this case have come in and said,  
24 well, it's not and, again, is just thwarting the efforts of  
25 True the Vote to advance something to help protect the

1 integrity of the election.

2 So with that, we believe that there's definitely a  
3 direct interest that True the Vote has as an organization with  
4 regard to its goal of helping to protect the integrity of the  
5 election. And then --

6 **THE COURT:** But isn't that what the integrity of the  
7 elections -- I guess the Government -- or the United States is  
8 going to argue that's just the generalized interest that  
9 everyone has? Isn't that going to be their argument?

10 **MR. TRAINOR:** Well, the certainly asserted that in  
11 their brief that that is and I think I'm speaking more  
12 specifically, your Honor, about the fact that True the Vote has  
13 actually -- it's more than just a generalized interest with  
14 regard to True the Vote. As a nonprofit organization, its  
15 mission is to go out and train people at the local level to  
16 investigate their own voter rolls and help protect the  
17 integrity of the election.

18 And in this particular case, what we've seen is that  
19 True the Vote in fulfilling that mission that it was created  
20 for has actually gone to the Plaintiff in this case, the  
21 Government, and said, here are documented cases of election  
22 fraud that are going on or potential election fraud that we  
23 need investigated and it's turning that information over to the  
24 Plaintiff in this case, the Government. They haven't done  
25 anything with it.

1                   So if it is a generalized interest that True the Vote  
2 is trying to protect, then the Government is supposed to  
3 protect that. There is proof that the Government has and so  
4 True the Vote should be allowed to intervene in this process to  
5 show that those interests are not being protected by what's  
6 being reported to them by the Government.

7                   So I think it's a little disingenuous for the  
8 Government to say, well, we can protect the integrity of the  
9 election if you'll just give us the information and True the  
10 Vote has, in fact, given the information and nothing is done  
11 with it and then they want to object to True the Vote  
12 intervening in the case to bring to the Court's attention where  
13 there are voter integrity issues when the Court is trying to  
14 address whether or not something as simple as voter I.D. is, in  
15 fact, a reasonable effort to thwart election fraud.

16                  **THE COURT:** Okay. Anything else on -- from True the  
17 Vote regarding intervention as a matter of right?

18                  **MR. TRAINOR:** Not as to a matter of right, your  
19 Honor.

20                  **THE COURT:** Okay. Then I'll let the United States  
21 respond regarding intervention as a matter of right.

22                  **MS. BALDWIN:** Thank you, your Honor. This is Anna  
23 Baldwin. As to intervention as a matter of right -- to take  
24 the two issues that Mr. Trainor discussed, first, the United  
25 States disagrees that True the Vote has any direct and natural

1 legally protectable interest in this litigation. All the  
2 interests that Mr. Trainor and True the Vote discussed are  
3 either generalized interests such as protecting confidence in  
4 the election or it can consider both generalized and  
5 speculative such as preventing vote collusion resulting from  
6 fraudulent votes.

7 So we don't think that there's any direct substantial  
8 legally protectable interest at stake here and even if there  
9 were, True the Vote would still have to show that there is  
10 inadequate representation by the State of Texas in this case  
11 and that's simply not a showing that they can make.

12 First, there's a presumption of adequacy where the  
13 parties share the same goal and that's an especially strong  
14 presumption when it's the Government party defending its laws  
15 as Texas is doing here. Texas has vigorously litigated this  
16 case in the past and as we can see from the motions to dismiss,  
17 the United States has no doubt that it will continue to do so.

18 Inadequacy would go to a showing that there's some  
19 kind of collusion between the parties and that simply isn't the  
20 case here. True the Vote's examples as to inadequacy of  
21 representation is talking about discovery of True the Vote. As  
22 the United States attached its motion, Texas did -- in fact, in  
23 the prior litigation objected discovery related to True the  
24 Vote as it was directed to Texas based on information that  
25 Texas had in their possession. So, for example, in deposition,

1 Texas took the position that that kind of discovery was barred  
2 by the legislative privilege, a position that we disagree with  
3 but nonetheless that Texas vigorously asserted.

4 So we would say, you know, on that particular point  
5 as well as that's not -- in fact, we don't show, in fact, that  
6 Texas will not adequately defend SB 14 in this litigation.

7 **THE COURT:** All right. But True the Vote is saying  
8 they have this information that might show voter fraud or does  
9 show voter fraud, whatever it is, and no one is doing anything  
10 about it. The Government is not looking into it and is not  
11 going to be presented if they're not part of this case.

12 **MS. BALDWIN:** Well, your Honor, first I would say,  
13 you know, that information that True the Vote is talking about  
14 is information that it has said it has provided to both of the  
15 parties. So it's not information that uniquely is True the  
16 Vote's possession, first of all. And second of all, the  
17 information that we understand that they're talking about seems  
18 to be dealing primarily with -- from allegations about voter  
19 registration and voter registration irregularities. That --  
20 those kinds of allegations argue and attempt to expand the  
21 scope of this litigation and this litigation about Texas' voter  
22 identification laws.

23 We don't think that you can show inadequacy of  
24 representation by attempting to, you know, adding on germane  
25 allegations and say that those non-germane allegations aren't

1 going to be litigated once that \*\*\* 9:48:13.

2                   **THE COURT:** All right. Let me let Mr. Trainor  
3 respond to that specific issue about what the information  
4 involves.

5                   **MR. TRAINOR:** Thank you, your Honor. The information  
6 involved the election irregularities that have been derived by  
7 True the Vote from all of the election monitoring that True the  
8 Vote has done previously here in Texas and, in fact, if you go  
9 look at *Texas versus Holder* -- and we cited it in our brief.  
10 It's actually in a footnote but the District Court in the  
11 District of Columbia placed essentially no weight whatsoever on  
12 the data offered in there --

13                   **THE COURT:** Okay. But what the Government -- I'm  
14 sorry. What the Government is saying is that your information  
15 goes to voter registration, not to what's at issue or is going  
16 to be at issue in this case which is the federal I.D. law.

17                   **MR. TRAINOR:** And we obviously disagree, your Honor.  
18 Our data shows election irregularities derived from actual  
19 monitors in polling locations on election day and they --

20                   **THE COURT:** So you're saying it's beyond voter  
21 registration?

22                   **MR. TRAINOR:** It is beyond voter -- now, obviously a  
23 bulk of that information because True the Vote has the ability  
24 to do searches across multiple public information platforms  
25 that we do have voter registration data as well but True the

1      Vote does have election irregularity issues in data that has  
2      been provided both to the State and to the Government and has  
3      not been used and was not vigorously propounded by the  
4      Defendant in this case, the State, whenever -- when *Texas*  
5      *versus Holder* was being argued in the District of Columbia.

6                    **THE COURT:** All right. Ms. Baldwin, do you want to  
7      respond to that? He's saying it's beyond just the voter  
8      registration information.

9                    **MS. BALDWIN:** Your Honor, that may be but the point  
10     is it's information that by counsel's statement is already in  
11     Texas' possession. It's not something that True the Vote  
12     uniquely has in this case and --

13                   **THE COURT:** And that's not the argument. I think the  
14     argument is information may be in the possession of the  
15     Government but no one is doing anything about it.

16                   **MS. BALDWIN:** Your Honor, and in this case, whether  
17     the Government is taking an action or not, taking action  
18     against seems to be not as a side issue to --

19                   **THE COURT:** I'm sorry, gentlemen. I'm picking up  
20     other conversations going on and it's hard for us to hear here  
21     in the courtroom.

22                   **MS. BALDWIN:** I'm sorry, your Honor.

23                   **THE COURT:** There are some people who are appearing  
24     by phone. Other counsel may be talking between themselves and  
25     it makes it difficult for us to hear.

1                   So go ahead, Ms. Baldwin.

2                   **MS. BALDWIN:** Thank you, your Honor. What I'm saying  
3 is that I'd like for True the Vote -- the allegations that  
4 they're making are seeking to gear into what action the  
5 Government does and does not take in response to information  
6 that they've allegedly collected and, again, that's information  
7 which is far outside the scope of the purpose and the results  
8 of the passage of SB 14 on racial and language minority voters  
9 in the state of Texas.

10                  **THE COURT:** All right. I'm going to proceed then on  
11 to the permissive intervention. Mr. Trainor?

12                  **MR. TRAINOR:** Yes, your Honor, thank you. So, your  
13 Honor, what we just heard that there's information that True  
14 the Vote has that's not being used and, of course, the key  
15 prong for the permissive intervention as cited by the Fifth  
16 Circuit in *New Orleans Public Service versus United Gas*  
17 *Pipeline* is will the intervention significantly contribute to  
18 the full development of the underlying factual issues in the  
19 suit?

20                  And I think the discussion that we've just had with  
21 regard to the information that True the Vote had, that it  
22 developed itself and to make it non-hearsay data for the Court  
23 to look at and to investigate the data that they have with  
24 regard to election irregularities, so the participation of True  
25 the Vote in the case at least permissively would allow for the

1 full development of factual issues in this case and would allow  
2 for True the Vote to be able to, one, present the data that it  
3 has to help support the passage of Senate Bill 14 and the voter  
4 I.D. bill to the Court and why it is a reasonable assertion by  
5 the State that voter I.D. should be used.

6 And so from that standpoint, we believe that True the  
7 Vote should be allowed to permissively intervene because of the  
8 factual information that they have and more importantly we know  
9 based upon the prior litigation of these two parties that True  
10 the Vote is going to -- you know, in this particular instance,  
11 True the Vote is going to have to appear before the Court at  
12 least to assert the First Amendment right that it claims and  
13 has claimed now in its pleading that you have before you with  
14 regard to the information that was discovered against it in the  
15 last proceeding.

16 So True the Vote is going to be in this case and  
17 obviously information that True the Vote has was very relevant  
18 to the Section 5 case. It will be relevant to this Section 2  
19 claim and so we believe that we should be allowed to  
20 permissively intervene.

21 **THE COURT:** All right. Ms. Baldwin?

22 **MS. BALDWIN:** Your Honor, the United States' position  
23 is that the interest that True the Vote seeks to address would  
24 be entirely adequately addressed through amicus participation  
25 and that full-fledged permissive intervention would only seek

1 to extend the burden on all parties. You know, True the Vote  
2 in its motion would address these things like the propriety of  
3 relief, non-germane allegations that the United States would,  
4 secondly, not concede the accuracy about the United States'  
5 conduct in the Section 5 preclearance process and so we think  
6 that the interest that True the Vote does have, there is no  
7 reason that this has to be, you know, expanded beyond just  
8 amicus participation.

9                   **THE COURT:** Okay. I'm going to take that under  
10 advisement. I should have a ruling on that motion to intervene  
11 if not within the week, within two weeks.

12                   I'd like to proceed to the scheduling order and it  
13 looks like the main argument is some parties wanting to have  
14 those finalized before the November 2014 election and others  
15 saying that's impossible and want it into 2015. So I'm going  
16 to allow the Veasey -- Mr. Dunn, are you speaking for the  
17 Veasey Plaintiffs?

18                   **MR. DUNN:** Yes. My co-counsel Mr. Derfner may also  
19 address some issues.

20                   **THE COURT:** Okay. You --

21                   **MR. DUNN:** May I proceed now?

22                   **THE COURT:** Yes.

23                   **MR. DUNN:** All right, your Honor, I think the most  
24 important point the Veasey Plaintiffs would like to make is  
25 that considering we have a considerable about of time -- nearly

1 a year -- until the next election, I think it's premature for  
2 the Court to simply throw up its hands and decide there's not  
3 enough time to resolve this case in advance of the first major  
4 election after implementation of the law.

5 Obviously, a Court order scheduling events in the  
6 case is a powerful motivator. There were issues that we  
7 conceded in the D.C. case we participated in in terms of the  
8 State not providing databases and having some issues with Court  
9 orders and the Court there had to make itself available for a  
10 number of in-person phone conferences to work out production of  
11 the databases by the State. No doubt that those issues may  
12 arise again in this proceeding.

13 Nevertheless, in the D.C. case, that case was filed  
14 in January. It was tried in July. The discovery period  
15 essentially lasted three and a half or so months and I don't  
16 think anybody was happy necessarily with the discovery process  
17 and its comprehensiveness but nevertheless we're looking at  
18 three to four times that in the proposed schedule that the  
19 Veasey Plaintiffs offer.

20 So essentially what we would suggest is that the  
21 Court put in place a schedule along the lines of what the  
22 Veasey Plaintiffs have suggested, deal with discovery issues  
23 within the Court's ability as they arise and if issues arise  
24 later that make a trial of the case before the election is  
25 probable, the Court can deal with that but at least the maximum

1 amount of discovery will have occurred in advance of the  
2 November election.

3                   **THE COURT:** So what was done in terms of discovery in  
4 the D.C. court versus what has not been done that needs to be,  
5 I guess, developed in this case?

6                   **MR. DUNN:** Well, some of the -- again, this is Chad  
7 Dunn, your Honor. Some of the litigants in the case, including  
8 my clients, intend to do some matching of databases. There's  
9 differing expert opinion and litigation opinion on the scope of  
10 such matches but nevertheless there will be some matching of  
11 the state driver's license and election identification  
12 certificate database and the state concealed handgun license  
13 database and then a multiple federal database which is called  
14 the "passports" and veterans' I.D.s and essentially all of the  
15 federal and state databases resulting from the issuance of  
16 I.D.'s that are permitted under Senate Bill 14.

17                   And so the production of those databases in a useable  
18 electronic format -- the crossing with one another and  
19 interpretation of results by experts is the process that's  
20 expected to take time. In the D.C. case, that occurred but the  
21 federal databases were not included in the maps. So there is a  
22 wider sort of net of databases that have to be produced for  
23 various agencies and then cross-referenced and dealt with by  
24 experts. So that's what different about the discovery.

25                   **THE COURT:** All right. And, Mr. Rios, what is your

1 client's position?

2                   **MR. RIOS:** Well, your Honor, our position is that  
3 through -- and through this whole process, the Court should be  
4 aware that the State of Texas is continually -- will  
5 continually use the various powers it has under the federal  
6 court system to delay this process to go forward. Their whole  
7 effort is to keep minorities from voting and just delay --

8                   **THE COURT:** Well, I guess my question is really -- so  
9 you're with the D.C. --

10                  **MR. RIOS:** We would oppose -- we think that this  
11 thing should go to trial before the -- they're able to  
12 implement this bill in another election. So we're definitely  
13 in support of --

14                  **THE COURT:** Okay.

15                  **MR. RIOS:** -- the trial going forward before the  
16 November election.

17                  **THE COURT:** All right. Mr. Haygood?

18                  **MR. HAYGOOD:** Yes, your Honor. Our position is  
19 consistent with the United States' position which is, you know,  
20 was stated -- one of your Honor's questions was about the  
21 difference between this case and the Section 5 case and one of  
22 the material differences is the standard here is different  
23 under Section 2 which required, to be frank, a lot more  
24 evidence to be proffered in support of our claims. I think  
25 more expert testimony -- we're dealing with a federal database

1 which we did not deal with in the Section 5 case.

2 And so we would proffer to this Court that we should  
3 proceed along the lines of the United States and --

4 **THE COURT:** Okay.

5 **MR. HAYGOOD:** -- I would ask for a trial that would  
6 commence in 2015 and a longer discovery schedule to allow for  
7 the full exposition of the evidence we need to amass in this  
8 case.

9 **THE COURT:** All right. Mr. Rosenberg?

10 **MR. ROSENBERG:** Yes. On behalf of Texas NAACP and  
11 MALC, we agree with the comments just expressed by Mr. Haygood.  
12 I would add that not only are -- is there going to be a lot  
13 more work done for the matching of the databases but the fact  
14 discovery is going to be much more extensive mainly because we  
15 were pressed -- I was also involved in the Senate 5 litigation  
16 and we had 90 days to do everything and there were things that  
17 we wanted to do with respect to discovery of their motions to  
18 -- for the purpose that we did not do and were not able to do  
19 in that short period of time and I think we're going to need an  
20 extensive amount of discovery that's going to have to be  
21 happening.

22 **THE COURT:** All right. Ms. Westfall?

23 **MS. WESTFALL:** Yes, your Honor. I would like to  
24 reiterate some of the points made and just provide additional  
25 information about what happened in the previous action. We

1 believe that our proposed schedule addresses one of the most  
2 important concerns that arose in the Section 5 litigation  
3 called *Texas v Holder*. That Court concluded that the parties  
4 neither presented it with sufficient amount of data nor  
5 subjected the data to an adequate level of analysis. So it  
6 couldn't rely on the parties -- any of the parties' evidentiary  
7 presentations.

8                 Here we believe that the proposed schedule that we  
9 have before -- with the Court provides the time that will be  
10 needed to develop and present a full and complete record. We  
11 also note that under our schedule, any party can file a motion  
12 for preliminary relief before the November 2014 election.  
13 That's, of course, always available.

14                 And to expand a little bit upon my first point  
15 related to the Section 5 matter, we believe that really  
16 demonstrates a hazards proceeding on an expedited schedule  
17 given the claims and the factual issues and the experts'  
18 analysis that needs to be developed. In *Texas v Holder*, the  
19 parties conducted complex and voluminous discovery to determine  
20 which Texas voters possessed the necessary state forms of photo  
21 I.D. under SB 14 but because of the expedited schedule in that  
22 case, the parties didn't present expert analysis of the Texas  
23 voters who possessed several forms of I.D. or met the  
24 disability section under Senate Bill 14 because that also  
25 relies upon federal agencies' determination.

1                   So in finding that Texas had not met its burden under  
2 Section 5, the Court noted that it did so without reliable  
3 expert evidence on a number of Texas registered voters who  
4 lacked any of these forms of I.D. The Court also noted that  
5 the record was incomplete because Texas had sought to receive  
6 an expedited schedule at the expense of obtaining data related  
7 to the federal I.D.

8                   So in this matter, you know, already Texas has  
9 indicated that it's going to seek data from five federal  
10 agencies related to the federal forms of I.D. and also the  
11 disability exception under Senate Bill 14 and the federal  
12 agencies involved are the Department of Defense, the Department  
13 of Veterans Affairs, the Social Security Administration, the  
14 State Department and Citizenship and Immigration Services.  
15 None of these federal agencies produced any information during  
16 the previous case.

17                   We believe that our schedule allows sufficient time  
18 to conduct all the comparisons of several millions of records  
19 across multiple state and federal databases, time to analyze  
20 the data, prepare reports and provide the Court with a complete  
21 record which is our -- of course, our goal and the goal that  
22 I'm sure the parties share. The issues involved in these  
23 comparisons are especially complex and especially time-  
24 consuming.

25                   We also -- I think it's worth noting that the

1 (indiscernible) raised previously during this conference that  
2 we believe our schedule recognizes that there is time also  
3 needed to litigate complex legal issues related to legislative  
4 privilege that the State indicates it will probably assert here  
5 to withhold discovery related to the legislature's intent in  
6 enacting Senate Bill 14.

7 We do -- with all this said, we share the concerns of  
8 all parties and the issues -- that they are of vital importance  
9 and that we need to proceed as expeditiously as possible. We  
10 want to reiterate that should factual developments proceed  
11 faster than anticipated, the parties are, of course, free to  
12 seek preliminary relief prior to November 2014.

13 Again, back to a point that Mr. Dunn made, we believe  
14 that it's not premature for the Court to set a schedule. We  
15 believe that we need a schedule right now to proceed with  
16 orderly discovery and to know what the expectations are. If we  
17 don't decide when the trial will be and how to schedule, we're  
18 going to have to play --

19 **THE COURT:** I don't know that he was proposing not  
20 having a scheduling order. He was saying enter your scheduling  
21 order and then if it's not doable, that's something we can  
22 address as we go along or something like that. I don't know  
23 that he proposed no scheduling order --

24 **MS. WESTFALL:** Okay, well --

25 **THE COURT:** -- but I may have missed that.

1                   **MS. WESTFALL:** -- well, yes -- no, I think I may have  
2 slightly tweaked what Mr. Dunn said but I think on that point  
3 that if we were to proceed under the Veasey schedule and then  
4 revisit the issue a few months later, we think that this can --  
5 this will be a disorderly way to proceed with discovery. We're  
6 trying to avoid a train wreck here and we think that if we had  
7 to proceed with the Veasey schedule, we would perhaps truncate  
8 our discovery in the short term and not do what we feel is  
9 necessary to prove our claim under Section 2 of The Voting  
10 Rights Act.

11                   Then if in a few months later we came to a point  
12 where it appears that the September trial date is not feasible,  
13 the United States would then have to go back, redo discovery  
14 and also, you know, prepare at the same time for other ongoing  
15 matters. So I think it would be tremendously inefficient to go  
16 with the Veasey schedule and then revisit it because it just  
17 means that we're going to be truncating discovery and all the  
18 federal database analysis, et cetera. In a way, it will create  
19 perhaps the same problems that arose in the Section 5 matter.

20                   **THE COURT:** All right. Mr. Scott, are you speaking  
21 for the State of Texas?

22                   **MR. SCOTT:** Yes, ma'am. I mean, if we're attempting  
23 to maximize confusion, I think Mr. Dunn has provided a path for  
24 that. If we're attempting to have an orderly process, I think  
25 that the scheduling order or proposed order that DOJ and all

1 the rest of the parties have agreed to, including the State of  
2 Texas, provides that.

3                   In hearing about the preliminary injunction  
4 potential, I would throw out that while we do not have that  
5 allowance in the proposed order, our Secretary of State's  
6 office, at least in the last litigation -- probably we need at  
7 least July in order to be able to implement and to modify the  
8 education process of those who will actually be winning the  
9 election in November. So from that perspective, I guess,  
10 whatever schedule the Court's inclined to do, we would ask that  
11 to the extent we're going to have the potential for some type  
12 of preliminary injunction that we allow for such a deadline in  
13 the proposed order.

14                   The other two things that we have in our proposed  
15 order that are a little different and not much -- it's just a  
16 deadline for adding two parties and a deadline to amend  
17 pleadings.

18                   **THE COURT:** Okay. Mr. Dunn, do you want to address  
19 the issue of the possibility of seeking preliminary relief  
20 prior to the '14 election versus trying to get all of this  
21 information that was not, I guess, tapped into for the D.C.  
22 suit -- trying to get all of that analyzed and everything else  
23 that needs to be done for a full, complete picture for the  
24 Court? Do you want to address the possibility of looking at  
25 preliminary relief instead of trying to truncate everything

1 that needs to be done?

2                   **MR. DUNN:** Yes. Yes, your Honor. Again, this is  
3 Chad Dunn for the record. So whatever things were stated in  
4 the Court's question and in the argument -- but first on the  
5 issue of can we get the information available, as experienced  
6 trial counsel and I'm sure as an experienced trial judge,  
7 discovery periods tend to start off at a crawl and then a walk  
8 and then a jog and then a sprint towards the end and what we're  
9 suggesting is have a schedule entered now that encourages the  
10 parties to get to the jog and the sprint sooner rather than  
11 later so that some of these detailed processes can be done.

12                   If it were a matter of a month or two as it was in  
13 the D.C. case, then I think the argument that's advanced by  
14 other counsel in terms of not having enough time would have  
15 some merits but we're talking about ten months' worth of  
16 discovery that can be allowed because the Court has the  
17 discretion to allow discovery up until trial as was done in the  
18 Section 5 D.C. case. So we do think there's ample time.

19                   On the issue of whether preliminary relief is  
20 available, I would just note that in the last few years, the  
21 Circuit has issued a number of opinions addressing various  
22 District Courts in Texas who have enjoined state law,  
23 especially election laws but other high-profile laws, and  
24 various panels of the Fifth Circuit have consistently said that  
25 it is an extremely rare case when a District Court should

1 enjoin a state law. In fact, those positions have been taken  
2 at the request and briefing of the State, many cases in which I  
3 have been involved.

4 So our concern is by simply saying, well, look, the  
5 Plaintiff can pursue a preliminary injunction and the State  
6 will then turn around and say, but you don't get a preliminary  
7 injunction striking down or somehow inhibiting the State  
8 statute because look at this list of recent Fifth Circuit  
9 cases. But more -- in addition to that point, as you just  
10 heard the State suggest, they want a preliminary injunction  
11 ruling to be issued by July.

12 I'll come back to whether that makes sense in a  
13 minute but even if that were the case, then that means under a  
14 scheduling proposal that has us not going to trial until March,  
15 there's very little -- we're still going to be at maybe the  
16 beginning of the jog cycle of the discovery process or the tail  
17 end of the walk at the point when Plaintiffs will be obligated  
18 to file a preliminary injunction motion and, therefore, would  
19 not have the advantage of much of the discovery we hope to  
20 accomplish and seek from all the parties.

21 Now, as to the issue of whether an injunction ought  
22 to be sought by July, Mr. Scott correctly noted, as I recall,  
23 the Secretary of State's testimony in the D.C. case that the  
24 State took the position that in order to allow them to  
25 implement Senate Bill 14, they would need to have had a ruling

1 from the D.C. Court in July in advance of the November  
2 election. It's one thing to implement a law which all of the  
3 Plaintiffs, I believe, contend is confusing, difficult and  
4 results in omission of voters or rejection of voters from being  
5 able to cast a ballot.

6 It's quite another to simply announce that we're not  
7 going to do this law this election cycle and you can continue  
8 to operate under the I.D. laws that have just been in effect  
9 for years and decades in the state. So we don't think a ruling  
10 is required that far in advance. Hopefully my other responses  
11 have addressed those questions.

12 **MR. DERFNER:** Your Honor, this is Mr. Derfner. Could  
13 I add something for just a second?

14 **THE COURT:** Yes.

15 **MR. DERFNER:** Thank you. I think Mr. Dunn, my  
16 co-counsel, has laid it all out. I just wanted to underline  
17 one thing and that's in regards to the notion of the  
18 possibility of preliminary injunction and that is what your  
19 Honor is facing now is not simply setting a trial date but the  
20 schedule leading up to that because if the discovery schedule  
21 is not on a timeframe that looks to the possibility of an early  
22 trial as we suggest, then at this junction there just won't be  
23 enough evidence amassed by the parties to look for a serious  
24 preliminary injunction.

25 **THE COURT:** Okay. I think that a compelling argument

1 has been made that we need to attempt to get this case resolved  
2 before the 2014 election. So the Court is going to adopt the  
3 D.C. Plaintiffs' proposed order regarding a trial date of  
4 September 2nd, 2014. I know it did not address a deadline for  
5 adding parties. I believe the parties had agreed to a December  
6 6, 2013 date on that.

7 And then we need a date to amend pleadings which --  
8 let's see. I guess we can do that by March 2nd, 2014. We need  
9 a pretrial conference date which -- Brandy, what are we looking  
10 at pre-September 2nd trial?

11 **THE CLERK:** August 28th, 2013.

12 **THE COURT:** Is that two weeks before?

13 **THE CLERK:** That's the -- your Honor, August 21st.

14 **THE COURT:** Okay. Pretrial -- final pretrial  
15 conference being August 21st, what other deadlines do we need  
16 to address?

17 **MR. SCOTT:** Your Honor, John Scott for the State of  
18 Texas. And, again, I want to re -- I guess -- assert the issue  
19 relating to confusion amongst the electorate. There is a  
20 critical role the Secretary of State of Texas regarding the  
21 education of local election officials and simply having  
22 sufficient time to be able to address that is -- it may be  
23 impossible with a September trial date.

24 **THE COURT:** Well, you know, it's not any different  
25 position, I guess, than where the State of Texas was asking the

1 D.C. Court to -- let's -- we want to get heard now quickly as  
2 soon as possible and now it's just reversed with the other side  
3 wanting to be heard quickly and, you know, it's just the  
4 position we're in, the situation we're in with what's before  
5 the Court.

6                   Okay. Any other deadlines we need to address?

7                   **MR. ROSENBERG:** Your Honor, Ezra Rosenberg for the  
8 Texas NAACP and MALC. The March 2nd, 2014 date for amending  
9 pleadings, is that going to include adding new parties?

10                  **THE COURT:** No, the new parties -- I believe, you-all  
11 had agreed or at least I saw that on a joint plan that was  
12 submitted was December 6th, 2013.

13                  **MR. ROSENBERG:** Okay. The only question was we had  
14 that as ripe for December 6th and thereafter a leave of the  
15 Court.

16                  **THE COURT:** Yes, that's okay.

17                  **MR. ROSENBERG:** Okay, great. Thank you, your Honor.

18                  **THE COURT:** Okay. And then any other deadlines that  
19 need to be addressed?

20                  **MS. WESTFALL:** Your Honor, this is Elizabeth Westfall  
21 for the United States. I wanted to raise the issue of initial  
22 disclosures which the United States will be making on November  
23 21st. The State has indicated when it will make its initial  
24 disclosure and also pursuant to your ruling on the trial date,  
25 we respectfully request that we have an opportunity to request

1 a status conference in a certain -- in a few months where -- at  
2 the time of your -- as you wish to revisit the schedule and see  
3 how discovery is proceeding.

4 **THE COURT:** Okay. Do you-all want to -- how about in  
5 February -- that'll be about 90 days out -- just to see --

6 **MS. WESTFALL:** Okay. That would be very  
7 satisfactory.

8 **THE COURT:** Okay. Brandy, do you want to give them a  
9 date in February?

10 And then if any disputes or issues come up, just get  
11 with Brandy. We can get on the phone and see if we can resolve  
12 them without briefing. By me briefing, maybe I can put you on  
13 a short schedule regarding the briefing.

14 **MS. WESTFALL:** Thank you, your Honor.

15 **MR. HAYGOOD:** Your Honor, this is Ryan Haygood with  
16 the Texas League of Young Voters and Imani Clark. I just  
17 wanted to thank the Court for the consideration of the status  
18 conference and wanted to add one additional distinction between  
19 this case and the earlier Section 5 case is that this case  
20 includes, as your Honor knows, a request for bail in under  
21 Section 3C of The Voting Rights Act. So that's an additional  
22 date consideration for this Court to consider when thinking  
23 about the schedule in this case.

24 **THE COURT:** Okay, thank you.

25 Brandy, status date?

1                   **THE CLERK:** February 12th at 9:00 a.m.

2                   **THE COURT:** Okay, February 12th at 9:00 a.m. And  
3 then I know there was an issue regarding interrogatories and I  
4 think in all fairness to both sides, it should be the same. I  
5 know we've got a lot of intervenors now on the Plaintiffs'  
6 side. So I believe the State of Texas had proposed 50  
7 interrogatories per side. Is there an objection from any of  
8 the Plaintiffs and intervenors on that?

9                   **MS. WESTFALL:** Yes, your Honor. This is Elizabeth  
10 Westfall for the United States. We believe that it is not  
11 appropriate to have fewer than 25 interrogatories --

12                   **THE COURT:** Per party?

13                   **MS. WESTFALL:** -- per party under the Federal Rules.  
14 So we would request 25 interrogatories for the United States,  
15 your Honor.

16                   **THE COURT:** Okay. What's the position on the other  
17 -- the D.C. Plaintiffs?

18                   **MR. RIOS:** This is Mr. Rios. We don't have any  
19 problems with what you suggested, your Honor.

20                   **THE COURT:** Okay.

21                   **MR. SPEAKER:** Your Honor, the State clearly leaves it  
22 within the discretion of the Court.

23                   **THE COURT:** Mr. Dunn?

24                   **MR. DUNN:** Your Honor, we agree that a number of the  
25 parties having the burden of proof are likely to need

1 additional interrogatories than others. What I would propose  
2 is that the parties live within the 50 that the Court suggested  
3 at this time and then when we come back in February, we can  
4 address having more as necessary.

5 **THE COURT:** Or sooner if necessary but I'll set it at  
6 50 interrogatories per side at this point and you can certainly  
7 urge the Court for more on that if necessary and you can do  
8 that by phone conference by calling Brandy if it's something  
9 that needs to be addressed quickly. Okay?

10 And there is an agreement regarding a discovery order  
11 which I'll sign. Is there any agreement regarding a protective  
12 order?

13 **MS. WESTFALL:** Your Honor, this is Elizabeth Westfall  
14 for the United States. We have circulated a draft of a  
15 protective order and we submitted one most recently two days  
16 ago. We're waiting for a response from the other parties and  
17 requested that they provide a response by November 20th. So  
18 hopefully we can reach agreement on the terms shortly.

19 **MR. TRAINOR:** Your Honor, this is Trey Trainor for  
20 True the Vote and we have no objections to the United States'  
21 protective order.

22 **THE COURT:** Okay. Anything else that needs to be  
23 addressed this morning?

24 I don't hear anything. So I'm going to assume not  
25 and I will move on then. If nothing further, you're excused.

1 Thank you.

2 **MR. SPEAKER:** Thank you, your Honor.

3 **MS. SPEAKER:** Thank you.

4 (This proceeding adjourned at 10:19 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink that reads "Toni I. Hudson". The signature is fluid and cursive, with "Toni" and "I." on the first line and "Hudson" on the second line.

December 11, 2013

TONI HUDSON, TRANSCRIBER